

APPEAL NO. 171103
FILED JULY 10, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 6, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI she cannot be assessed an impairment rating (IR) at this time; and (4) the claimant had disability from July 16, 2016, through the date of the CCH.

The appellant (carrier) appealed all of the hearing officer's determinations. The carrier contends on appeal that the hearing officer made a critical error when he applied his own medical opinion which was contrary to the opinion of the designated doctor. The claimant responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the accepted compensable injury is a cervical sprain/strain. The claimant testified that she was injured in a motor vehicle accident.

EXTENT OF INJURY

(Dr. T) was the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, extent of the compensable injury, return to work, and disability. On December 9, 2016, Dr. T examined the claimant to determine the extent of the compensable injury. In a report dated December 19, 2016, Dr. T opined that disc protrusions at C3-4 and C6-7 "are not supported by objective exam findings on EMG/NCV testing as related to the injury versus pre-existing findings." The hearing officer noted Dr. T's opinion, and stated in his discussion that "[t]his does not make sense since an EMG/NCV does not test for disc protrusions." The hearing officer further stated that Dr. T's opinion is not supported by the preponderance of the evidence, and determined that the compensable injury extends to disc protrusions at C3-4 and C6-7.

On appeal the carrier contends that the hearing officer erred in applying his own medical opinion. We agree. Whether or not an EMG/NCV tests for disc protrusions is

not subject to common knowledge, and the evidence in this case did not establish that an EMG/NCV does not test for disc protrusions. The hearing officer based his determination, in part, on a perceived medical fact not in evidence. Accordingly, we reverse the hearing officer's determination that the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion, and we remand the issue of whether the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion to the hearing officer for further action consistent with this decision.

MMI, IR, AND DISABILITY

Because we have reversed the hearing officer's determination that the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion and have remanded that issue back to the hearing officer, we also reverse the hearing officer's determinations that the claimant has not reached MMI and therefore an IR cannot be assessed at this time, and that the claimant had disability from July 16, 2016, through the date of the CCH, and we remand the issues of MMI, IR, and disability from July 16, 2016, through the date of the CCH to the hearing officer for further action consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion, and we remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant has not reached MMI and we remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that because the claimant has not reached MMI she cannot be assessed an IR at this time and we remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant had disability from July 16, 2016, through the date of the CCH and we remand this issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to consider the evidence in the record in determining whether the (date of injury), compensable injury extends to a C3-4 and C6-7 disc protrusion. The hearing officer is then to make findings of fact, conclusions of law, and a decision on: (1) whether the (date of injury), compensable injury extends to

a C3-4 and C6-7 disc protrusion, (2) the claimant's date of MMI, (3) the claimant's IR, and (4) whether the claimant had disability from July 16, 2016, through the date of the CCH.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge